HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.6227 of 1999

Dated 25th day ofJune, 2007

Between:

The Voltas Employees Cooperative
Canteen Limited, D.No.87-D, R.P.Road,
Secunderabad, rep. by its President ..
Petitioner

And

The Assistant Commissioner of
Labout Court, Circle-II-cum-The
Authority in the payment of Wages Act,
Anjayashramika Welfare Bhavan, R.T.C. X
Road, Hydeabad
and three others ..
Respondents

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O R D E R:

The petitioner, which is a society registered under the Cooperative Societies Act and represented by its President, has filed this writ petition questioning the action of the 1st respondent in sending recovery proceedings dated 4.2.1999 to the 2nd respondent-XXI Metropolitan Magistrate, Nampally, Hyderabad without giving any show cause notice and without deciding I.A.No.3 of 1997 in M.W.No.51 of 1996.

The case of the petitioner is that originally, Voltas Employees Cooperative Canteen Limited was represented by its President, C.Vishwam, and other members of the elected body. The Assistant Labour Officer, Circle-17, Hyderabad raised a dispute under the Minimum Wages Act before the Authority Under the Minimum Wages Act-cum-Assistant Commissioner of Labour, Hyderabad-II and the same was numbered as M.W.No.51 of 1996. As C.Vishwam who was the President of the petitioner-society, did not evince any interest in contesting the matter, the Assistant Commissioner of Labour, passed a n *ex parte* order 26.6.1996 in M.W.No.51 of 1996 directing the petitioner-society to deposit an amount of Rs.5,829/- together with five times compensation totalling Rs.34,974/- by way of demand draft. Subsequently, the present body came into existence, and after coming to know of the order dated 26.6.1996, the petitioner-society represented by its President, filed I.A.No.3 of 1997 on 11.2.1997

requesting the authority to set aside the *ex parte* order and reopen the matter. Now, the grievance of the petitioner is that the 1st respondent-Assistant Commissioner of Labour, without deciding the petition filed by the petitioner, sent an application dated 4.2.1999 under Section 20(5)(b) of the Minimum Wages Act, 1948 to XXI Metropolitan Magistrate, Nampally, Hyderabad requesting him to initiate action and recover the amount of Rs.34,974/- from the petitioner.

The 3rd respondent alone has filed a counter affidavit which is not at all relevant for the purpose of deciding this case.

Heard the learned counsel for both the parties and perused the material placed on record.

Evidently, the petition to set aside the order dated 26.6.1996 is very much pending before the Assistant Commissioner of Labour. But, the authority, instead of deciding the matter either way, sent an application under Section 20(5)(b) of Minimum Wages Act requesting the criminal Court to recover the amount. The order fixing the liability on the petitioner was passed on 26.6.1996, and as per the order, the amount is to be paid within 30 days from the date of receipt of a copy of the order and the period fixed in the order must have expired sometime in the month of July or August, 1996. The application which was numbered as I.A.No.3 of 1997, was filed on 11.2.1997. When once a petition is filed stating that the order dated 26.6.1996 is an *ex parte* order, in my considered view, a primary duty is caste on the authority to decide the matter first before initiating any action for recovery of the amounts, instead, the authority kept the petition pending for two years i.e. from 11.2.1997 to 3.2.1999, and on 4.2.1999, sent an application under Section 20(5)(b) of the Minimum Wages Act to the 2nd respondent to initiate necessary action for recovery of the amount.

In the light of the above discussion, this Court is of the view that the action of the 1st respondent is definitely contrary to the established

procedure under law and the 1st respondent-Assistant Commission of Labour, before whom the petition i.e. I.A.No.3 of 1997 is pending, is hereby directed to decide the application and pass appropriate orders.

As the 1st respondent is directed to decide such application, the impugned order dated 4.2.1999 does not hold good and is liable to be set aside.

In the result, the writ petition is allowed setting aside the order dated 4.2.1999 passed by the 1st respondent-Assistant Commissioner of Labour. No costs.

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25.06.2007

bcj